COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Complaint of Covad Communications Company)

And AT&T Communications of New England, Inc.)

Regarding Collocation Power Charges Assessed)

By Verizon New England, Inc.)

_____)

ANSWER OF VERIZON MASSACHUSETTS

Pursuant to 220 C.M.R. § 45.05(1), Verizon Massachusetts ("Verizon MA") files this Answer to the Complaint of Covad Communications Company ("Covad") and AT&T Communications of New England, Inc. and its affiliated companies (collectively referred to as "AT&T") filed with the Department on February 22, 2001. Complainants allege that Verizon MA has been charging competitive local exchange carriers ("CLECs") for DC power provided to collocation arrangements in violation of D.T.E. Tariff 17. Specifically, they claim that the tariff does not permit Verizon MA to charge CLECs on a per amp basis for the number of fused amps Verizon MA makes available on each power feed a CLEC orders and that Verizon MA's assessment of DC power charges on this basis from the date the Department approved the tariff violates the "filed rate doctrine." As discussed below, the Complaint is fatally flawed and should be dismissed without further proceedings.

BACKGROUND

In an effort to make a case where none exists, Complainants conveniently ignore the plain, Department-approved language of D.T.E. Tariff 17, which until a recent amendment, provided that DC power would be assessed per fused amp provisioned to the CLEC collocation arrangement on a per amp, per feed basis. See D.T.E. Tariff 17, Part E, Section 2.2.1.B, Part E. Section 2.6.3.C., Part M, Section 5.2.3.(1) Copies of the tariff provisions are attached as Exhibit A of this Answer. This language is not new but has been in D.T.E. Tariff No. 17 since it was filed in April 1999, in D.T.E. 98-57. The Department approved the tariff after extensive investigation in which AT&T, Covad, and other CLECs participated and had the opportunity to raise any issues regarding that tariff - including the application of the DC power charges. Neither of the Complainants and no other party to the proceeding challenged Verizon MA's tariff provisions that clearly state that DC power rates apply on a per fused amp, per feed basis.

In suggesting that there is an ambiguity in the tariff, AT&T and Covad attempt to convey the impression that they were confused about the application of the DC power charges under the tariff. They contend that they only became aware of the issue in connection with discussions occurring in other jurisdictions at the end of 2000. Complaint at ¶ 2. AT&T and Covad's claims are simply not correct. The Complainants were well aware of how Verizon MA would apply its DC power charges under D.T.E. Tariff 17. Not only is the tariff clear concerning the application of the rates, but before evidentiary hearings even began in D.T.E. 98-57, Verizon MA witnesses

testified concerning the manner in which Verizon MA applied DC power charges and Verizon MA provided CLECs with information regarding the charges.

In D.T.E. 98-57, a Covad witness erroneously asserted that Verizon MA was charging CLECs for a minimum of "60 amps per amp per feed" (sic) in testimony filed in July of 1999. See Direct Testimony of Michael Moscaritolo dated July 26, 1999, at 19. In prefiled rebuttal testimony, Verizon MA explained that the proposed tariff did not contain a minimum requirement as suggested by the Covad witness. The Verizon MA witness proceeded to explain that under the proposed tariff DC power rates were applied on a per fused amp, per feed basis based on the level of power specified by the CLEC. Rebuttal Testimony of Amy Stern on behalf of Bell Atlantic-Massachusetts dated August 16, 1999, at 46. As Verizon MA's witness pointed out:

The Covad applications specified 40 DRAIN amps of power feed. Proper engineering for DC power requires 60 fused amps to support 40 amps of drain. The DC power feeds that are fused for 60 amps are allocated and dedicated to Covad and require [Verizon] to engineer the power distribution plant accordingly. The power rates are based on fused amps as well, not drained amps. Covad may specify their power requirements in as little as single amp increments and if they require less than 60 fused amps, they should order less, but [Verizon] should not be penalized for providing the power requirements consistent with the Covad application. Id.

In addition to the plain language of D.T.E. Tariff 17, the CLEC Handbook, available on Verizon MA's website, contained a description of the provisioning of DC power and again pointed out that charges for DC power are assessed on a per fused amp, per feed basis. See CLEC Handbook, Volume III, Section 4.2 (Power to the Collocation Node).

The Department and CLECs also questioned Verizon MA's collocation witness at the November 15, 1999, Technical Session in D.T.E. 99-271 concerning the issues raised here. See D.T.E. 99-271, Tr. 1106-11. The Department noted that some CLECs had expressed concern about Verizon MA's application of DC power charges on a per fused amp, per feed basis and asked the Verizon MA witness to explain the company's position. The witness testified that "[w]e're charging for the amount fused, and we're charging for both an A and a B feed." Tr. 1107. The testimony explains precisely how the DC power charges set forth in D.T.E. Tariff 17, then being reviewed by the Department in D.T.E. 98-57, applied. Once again, Verizon MA explained the application of the charges before the evidentiary hearings occurred in that proceeding, and despite this, no CLEC raised any question during the case about the charges or the tariff provisions relating to power.

For AT&T and Covad to now contend that they only learned of the DC charging issue in late 2000 is belied by the facts.(2) They were parties to Department proceedings in which the application of the charges under the tariff were clearly explained. Indeed, those proceedings occurred over a year before AT&T and Covad state in their Complaint that they first became aware of the power "issue." For Complainants to now contend that the tariff is ambiguous is also incredible - the tariff specifies in unambiguous terms that DC power charges apply on a per fused amp, per feed basis, and AT&T and Covad received multiple explanations concerning the application of the charges while the tariff was being reviewed before Department approval. The Complainant's claims are nothing more than a post hoc scheme to avoid charges that are clearly specified in a Department-approved tariff.

Rather than addressing the issue in the proper forum - the tariff investigation in D.T.E. 98-57 - Covad waited until Verizon MA's 271 proceeding when Covad launched a collateral attack on the power charges in its comments filed with the FCC. See, e.g., In the Matter of Application by Verizon New England Inc., et al. for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Massachusetts, Comments of Covad Communications Company, CC Docket No. 00-176 (October 16, 2000), at 43-47. In response to Covad's claims before the FCC, the Department reaffirmed that Verizon MA's DC power rates and the application of the rates was reasonable and rejected the issues now raised by Complainants (i.e., alleged overcharging for DC power). See In the Matter of

Application by Verizon New England Inc., et al. for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Massachusetts, Reply Comments, CC Docket No. 01-9 (February 28, 2001, at 2-3); In the Matter of Application by Verizon New England Inc., et al. for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Massachusetts, Evaluation of the Massachusetts Department of Telecommunications and Energy (Vol. I of II), CC Docket No. 00-176 (October 16, 2000), at 39-41.

In short, AT&T and Covad's Complaint attempts to create confusion about the terms of Verizon MA's tariff where none exists to evade charges that have been lawfully imposed under an approved tariff. The Department should reject their claims.

RESPONSE TO COMPLAINANT'S ALLEGATIONS

In response to the specific allegations contained in the Complaint, Verizon MA states as follows.

1. Verizon MA does not dispute that Complainants initiated this action to secure a declaration by the Department that Verizon MA allegedly failed to charge its filed rate for DC power provided to collocating carriers under D.T.E. Tariff 17. Verizon MA denies that Complainants are entitled to such relief. Until the Department's February 15, 2001, approval of revisions to D.T.E. Tariff 17 proposed by Verizon MA, the tariff expressly provided that Verizon MA would assess its DC power charges to CLECs "per fused amp" provided and based on the "total power provisioned to the [CLEC] multiplexing node…." See D.T.E. Tariff 17, Part E, Section 2.2.1.B, Part E. Section 2.6.3.C., Part M, Section 5.2.3. In addition, the tariff clearly states that this charge applies to each power feed Verizon MA provides to a CLEC in connection with its collocation arrangement. See id. at Part E, Section 2.2.1.B and Part M, Section 5.2.3. Verizon MA denies the remaining allegations contained in this paragraph.

2. Verizon MA denies the allegations contained in the first sentence of this paragraph to the extent that it suggests that Verizon MA overcharged CLECs for DC power or that Verizon has overcharged CLECs for DC power in other jurisdictions. Verizon MA also denies that AT&T and Covad were not aware that Verizon MA intended to apply its DC power charges on a per fused amp basis for each feed requested by a CLEC until this matter was raised as an "issue" in the former Bell Atlantic-South region. Verizon MA does not dispute that AT&T entered into an agreement with Verizon in states that were formerly part of the Bell Atlantic-South region that addressed a number of issues, including the application of collocation power charges. Verizon MA admits the allegations contained in the third sentence of this paragraph. Verizon MA does not dispute that Covad and AT&T filed a complaint regarding DC power in New York; however, that complaint was filed on November 16, 2000, and not January 17, 2001. Verizon MA denies that Covad and AT&T had any basis for filing such a complaint and states that the claims asserted by the Complainants in New York are similarly without merit.

3. Verizon MA admits that on January 12, 2001, it filed a proposed revision to D.T.E. Tariff 17 regarding the application of DC power rates, but denies that it did so in anticipation of the filing of a complaint as alleged by the Complainants. To the contrary, as noted in Verizon MA's letter to the Department dated February 1, 2001, this change "was intended to address an issue that was raised in Verizon MA's initial 271 filing with the FCC regarding the application of power rates." See Letter from Bruce P. Beausejour to Mary L. Cottrell Re: Verizon Massachusetts Tariff Filing of January 12, 2001 dated February 1, 2001. Specifically, Verizon MA proposed to change the manner in which it charged for DC power under D.T.E. Tariff 17 from a per fused amp basis, as required under the Department-approved D.T.E. Tariff 17 at that time, to a per load amp requested basis. Verizon MA also proposed language regarding random inspections to verify the actual power load drawn by physical collocation arrangements. See Verizon MA's January 12, 2001 Tariff Filing. Verizon MA denies the remaining allegations contained in this paragraph.

4. Verizon MA admits that the proposed new tariff language applies to charges for collocation incurred after February 11, 2001, but denies the allegations contained in the first sentence of this paragraph to the extent it implies that there is any past or present "issues" regarding DC power which the Department need address. Verizon MA denies the allegations contained in the second sentence of this paragraph to the extent it suggests that Verizon MA improperly and/or unlawfully forced Complainants or other CLECs to pay for collocation power in Massachusetts. Verizon MA denies the allegations contained in the third sentence of this paragraph.

5. Verizon MA denies that Complainants are certificated competitive local exchange carriers in Massachusetts because the Department does not certify carriers who operate in the Commonwealth. Carriers operate in the Massachusetts without Department certification in accordance with the Department's ruling in Re Regulatory Treatment of Telecommunications Common Carriers, D.P.U. 93-98 (May 11, 1994) (Department eliminates certification requirements, requiring instead that carriers register with the Department).

6. Verizon MA admits the allegations contained in this paragraph.

7. Verizon MA admits that Part E, Sections 1, 2, and 9 of D.T.E. Tariff 17 governs collocations arrangements in Massachusetts, but denies that the tariff provisions cited by Complainants are all that are relevant for collocation. In addition to the cited sections, Part M, Section 5 is also applicable to CLEC collocation arrangements in Massachusetts.

8. Verizon MA admits that CLECs order DC power to operate their collocation equipment under D.T.E. Tariff 17. Verizon MA lacks sufficient information to form a belief as to the truth or falsity of Complainants' allegation that they typically order DC power based on the highest amount of amperage that their collocated equipment may drain. Currently, if a CLEC requests 40 load amps of DC power, Verizon MA will provide a feed fused at (on average) approximately 60 amps - all of which the CLEC has the ability to draw. Carriers may specify (and AT&T does) the precise number of feeds and fused amounts to be provided to the collocation arrangement. Verizon MA provides DC power in accordance with the CLECs specifications and established engineering practices.

9. Verizon MA disagrees that CLECs understand the power ordering process. Verizon MA believes that Complainants may have incorrectly ordered power and now want to blame Verizon MA. When ordering DC power, CLECs in Massachusetts have an opportunity to review their applications with Verizon MA to understand how all rates would be applied to their collocation arrangements. Some CLECs have revised their original power requirements after these discussions.

Contrary to Complainants' assertions, CLECs do not typically identify the maximum amount of power that their equipment can draw. Instead, as noted above, the CLECs order the amount of DC power they believe they will need presently and over time. Verizon MA admits that power drainage is measured in amps, but denies that CLECs order from Verizon on a "drained amp" basis. While CLECs identify anticipated drained amps on Verizon MA's Collocation Application, along with other information, the Collocation Application does not determine the appropriateness of Verizon MA's DC power charges - the applicable tariff (D.T.E. Tariff 17) does. Until the recent changes to D.T.E. Tariff 17 on February 11, 2001, the tariff expressly provided that DC power would be assessed on a "per fused amp" basis. See MA D.T.E. Tariff 17, Part E, Section 2.2.1.B, Part E. Section 2.6.3.C., Part M, Section 5.2.3.

10. Verizon MA admits that many CLECs request two "feeds," which are the electric conduits that carry the DC power to the CLEC equipment, but denies that CLECs use one of these feeds solely for backup or redundancy purposes. CLECs are; in fact, drawing power on all of the power feeds to their collocation arrangements. During the first week of February 2001, Verizon MA tested the power feeds serving 298 collocation arrangements in 32 Massachusetts central offices. This sampling included the collocation arrangements of 32 different CLECs. The tests were conducted at Verizon MA's Battery Distribution Bays ("BDFB") or Power Distribution Bays ("PDB")

where the CLEC power feeds are fused. Of these 1,022 power feeds, 994 or 97.26 percent were drawing power on both feeds at the time of the test. In the isolated cases where the power feeds were not drawing power, Verizon MA did not audit the CLEC equipment to identify if the power feeds were actually connected to the CLECs' equipment or if the CLECs' equipment had any trouble condition. It is evident that CLECs are using both the A and B feeds to power their equipment; there is power being drawn on both the A and the B feeds; and CLECs do not use the B feed as merely a redundant backup feed. It is, therefore, appropriate for Verizon MA to charge CLECs for collocation power based on the amount of power and the number of power feeds requested by the CLECs on their collocation applications, as D.T.E. Tariff 17 required.

Verizon MA lacks sufficient knowledge to form a belief as to the truth or falsity of Complainants' allegation that each feed alone is adequate to carry the maximum power of the collocation equipment that the CLEC actually deploys. Verizon MA denies that it "requires" CLECs to order a minimum of two feeds or subfeeds. While Verizon MA's Collocation identifies A&B feeds as an "A&B Feed Pair", this reflects engineering practice and the historic industry preference for at least two feeds to be used in providing DC power for collocated equipment. CLECs can and do order whatever number of feeds they believe are necessary to operate the equipment they place in their collocation arrangements. The CLECs determine how to deploy these feeds within their collocation arrangements and how to provide these feeds to multiple pieces of equipment.

11. Verizon MA does not dispute that the example described in this paragraph is one possible manner in which a CLEC may choose to power its collocated equipment. Further answering, Verizon states that this benefit only exists where CLECs have accurately identified the equipment to be collocated and ordered sufficient DC power, including A&B feeds with sufficient amperage. Verizon MA lacks sufficient information to state a belief as to whether, under ordinary circumstances, the two feeds each carry only half the actual power used. CLECs have the ability to draw on all of the amps fused (per feed), and therefore, Verizon MA charges for these amps. This policy is reasonable because Verizon cannot monitor DC power on each of the thousands of power feeds extending from its BDFB to the collocated equipment served by those power feeds. Therefore, at any time, the actual power load or drain of a particular CLEC's equipment may exceed (either accidentally or intentionally) the number of load amps the CLEC requested from Verizon MA. In fact, a number of CLECs have blown fuses within their collocation arrangements.

12. Verizon MA admits the allegations contained in this paragraph.

13. Verizon MA admits that it installs a fuse on DC power feeds consistent with established engineering standards but denies that it makes fusing available at a minimum of 10 amp increments. Verizon MA admits that established engineering principles call for fusing at some multiple of the expected drain. All other allegations are denied.

14. Verizon MA fuses power at 1.25 to 1.50 times the load amps per feed requested by the CLEC, and this method is consistent with established industry practice. Complainants point out in the second sentence of this paragraph that "[I]f fuses were set at the level of the actual anticipated power drain, they would constantly 'pop,' disrupting the circuit continually." Verizon MA does not dispute this allegation. These "pops" occur due to a surge in demand. Verizon MA also does not dispute the allegations in the third sentence of this paragraph that "it would make little sense to set the capacity of the fuse at the same level as the power regularly to be drawn" (emphasis added) and that "fuses are never selected at the expected drain rate." It is therefore reasonable to fuse at a higher amp level than the equipment is rated. Accordingly, Verizon MA does not dispute the allegations contained in the third and fourth sentences of this paragraph. Verizon MA denies Complainants' allegation that "the "size of the fuse does not increase the amount of power the equipment can draw." As noted above, if the equipment never drew more than the load amps requested by the CLEC, there would be no danger of the "pops" described by the Complainants. The provision of fusing at higher fuse levels means

that more power is available for use without fear of the "pops" discussed above.

15. Verizon MA admits that if a CLEC orders 50 load amps of power, Verizon MA may install an 80 amp fuse depending on the power source, but denies that doing so is necessarily "typical." In response to the second sentence of this paragraph, Verizon MA denies that where Verizon MA installs such a fuse that this fused amount is more than the CLEC ordered, or than Verizon MA is obligated to provide. Complainants do not dispute that Verizon MA should fuse amps at higher than the load amp requested (per feed requested) - they simply do not want to pay for it. Verizon MA also denies Complainants' allegation that this amount is more than the CLECs' equipment actually can or will be able to use.

16. Verizon MA admits that until the tariff revisions that become effective on February 11, 2001, Verizon MA charged CLECs requesting DC power based on the number of amps fused and the number of feeds requested, as required by the tariff. Verizon MA denies the allegations contained in the first sentence of this paragraph to the extent they suggest that Verizon MA's collocation charges were not assessed for collocation power requested by a collocating CLEC or were imposed without regard to how much power a collocating CLEC could actually use. In response to the remaining allegations in this paragraph, Verizon MA incorporates its response to paragraph 15 as if fully set forth herein.

17. Verizon MA denies the allegations contained in this paragraph.

18. Verizon MA admits the allegations contained in this paragraph.

19. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions provides that DC power charges are assessed on a per amp fused, per feed basis.

20. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions clearly specifies that DC power charges are assessed on a per amp fused, per feed basis.

21. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions clearly specifies that DC power charges are assessed on a per amp fused, per feed basis.

22. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions clearly specifies that DC power charges are assessed on a per amp fused, per feed basis.

23. The tariff provision referenced in this paragraph speaks for itself and when read in connection with other provisions clearly specifies that DC power charges are assessed on a per amp fused, per feed basis.

24. Verizon MA denies the allegations contained in this paragraph.

25. Verizon MA denies the allegations contained in this paragraph. "Total power provisioned" as used in D.T.E. Tariff 17 refers to the total power made available by Verizon MA as requested by a CLEC at all DC power feeds provided by Verizon MA to a CLEC's collocation arrangement.

26. Verizon MA denies the allegations contained in this paragraph.

27. Verizon MA denies the allegations contained in this paragraph. Further answering, Verizon MA states that the referenced tariff provisions are not ambiguous and that the Complainants had ample opportunity to review the tariff language. Furthermore, Complainants were well aware of Verizon MA's assessment and application of DC power charges for collocation arrangements in Massachusetts, which the tariff language reflects. Thus, Complainants cannot credibly contend that there was any ambiguity with respect to the application of Verizon MA's tariffed DC power charges associated with collocation in Massachusetts.

28. Verizon MA denies the allegations contained in this paragraph.

29. Verizon MA admits the allegations contained in this paragraph to the extent "supplied" means power provisioned by Verizon MA and available for the CLECs use in connection with its collocation arrangement. In its Phase 4-G Order the Department found reasonable the "cost per amp" of DC power identified in Verizon MA's collocation cost study. The application of the rates is clearly set forth in Part E, Section 2.6 of Verizon Tariff DTE No. 17 ("Application of Rates and Charges") that expressly provides that DC power provided to a CLEC collocation node will be "assessed per fused amp provided" and "will be based on the total power provisioned to the multiplexing node…." Part E, Section 2.6.3.C.

30. The Department's Phase 4-G Order speaks for itself, and Verizon MA denies that it supports the allegations advanced by Complainants.

31. Verizon MA denies the allegations set forth in this paragraph.

32. The Department's findings in the Phase 4-G Order speak for themselves, and Verizon MA denies that they support Complainants allegations.

33. Verizon MA denies the allegations contained in this paragraph. When Verizon MA filed its cost study addressing DC power, AT&T and other CLECs were well aware that Verizon MA would assess DC Power on a per fused amp, per feed basis. Indeed, MCI's expert witness in the Consolidated Arbitrations docket, Rick Bissell, specifically raised on the record the fact that Verizon MA intended to charge on a "fused amp basis." Mr. Bissell testified:

The most significant area in this cost study…is the cost of power, as explained by Mr. Lathrop, can run into 80, 90,000 dollars per amp for a CLEC. In addition to that, 30 percent of that 80 or 90,000 is simply because the cost is based on a fuse amp, as opposed to how much power you're using. So, for example, CLECs are already paying a premium of 30 percent, in much the same way as if you had a 15-amp fuse in your house and you're only using 10 amps of it. And similarly, in the telecommunications environment, suppliers recommend a minimum of 30 percent higher fusing than the actual drain.

Consolidated Arbitrations Docket, Tr. Vol. 24 at 51-52 (December 15, 1997). Mr. Bissell's testimony is significant for several reasons. Mr. Bissell testified almost five months after Mr. Grenier's April 29, 1997, testimony referenced by Complainants and clearly negates any suggestion that the parties to the proceeding or the Department had any questions regarding whether Verizon MA's proposed DC power costs would be applied on a fused amp basis. Even more significant was the fact that Mr. Bissell did not offer this observation regarding charges based of fuse amps as a problem to be addressed, but merely as one of a number of reasons it was important for the Department to get its calculation of the per amp power charge right. See id. at 52.

Indeed, while parties to the Consolidated Arbitrations raised numerous issues regarding Verizon MA's proposed DC power costs, subsequent to Mr. Bissell's testimony in December of 1997, no party to the Consolidated Arbitrations (including AT&T) raised the fact that Verizon MA charged CLECs on a fused amp basis as an issue to be addressed by the Department prior to its approval of the DC Power costs in the Departments Phase 4-G Order.

FIRST AFFIRMATIVE DEFENSE

Complainants' claims should be dismissed for failure to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Complainants' claims are barred by laches.

THIRD AFFIRMATIVE DEFENSE

Complainants' claims are barred by res judicata as those claims have already been decided by the Department in prior proceedings.

FOURTH AFFIRMATIVE DEFENSE

Complainants are collaterally estopped from asserting the claims contained in the Complaint because prior Department rulings have already addressed those issues and determined that they are without merit.

FIFTH AFFIRMATIVE DEFENSE

Complainants' claims should be barred by principles of equitable estoppel.

Therefore, for the reasons set forth above, Verizon MA respectfully requests that the Department dismiss AT&T and Covad's Complaint.

Respectfully submitted,

Verizon New England Inc., d/b/a Verizon Massachusetts

By its attorneys,

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1.

1 On February 11, 2001, a revision to Verizon MA's D.T.E. Tariff 17 became effective that changed the application of the DC power charges from "fused amps" provisioned to the number of load amps specified by the CLEC. This change in the tariff will result in a significant reduction in the DC power charges incurred by CLECs. To avoid confusion in this Answer, unless otherwise specified, references and discussions regarding Verizon MA's practices regarding the application of DC power and D.T.E. Tariff 17, refer to its practices and the provisions of the tariff prior to February 11, 2001.

2.

2 The Complainants also could not be confused because Verizon MA charges for DC power on the same basis under its FCC Expanded Interconnection Tariff for

collocation arrangements provided to AT&T and Covad. Moreover, as discussed below, the issue of charging on a fused basis was raised in the Consolidated Arbitrations when the DC power rates were set.